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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/536,762	03/28/2000	Akio Yamanishi	44319-051	5310

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EXAMINER

KREMER, MATTHEW J

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 11/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

Advisory Action

Application No.

09/536,762

Applicant(s)

YAMANISHI, AKIO

Examiner

Matthew J Kremer

Art Unit

3736

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

ERIC F. WINAKUR
PRIMARY EXAMINER

Continuation of 5. Other: The Applicant filed a response to Examiner's Final Rejection mailed on 6/19/2002. The Examiner finds the arguments unpersuasive. The Applicant contends that Robinson discloses each detector ring is adapted to receive light in a different wavelength band. The Applicant points to column 14 which describes different configurations which are used as a basis to describe the physics of the light propagation through the patient. Further, the configurations described in column 14 constitute a different embodiment than the one relied on by the Examiner in the rejection of the Applicant's claims. This embodiment is, therefore, not applicable to overcoming the rejection. The Applicant also relies on column 26, lines 39-45 for the argument that each detector ring is adapted to receive light in a different wavelength band. Although the embodiment described in the passage is the embodiment that the Examiner relied on for the rejection of Applicant's claims, the Examiner disagrees with the Applicant's interpretation of this embodiment. The passage reads "[a]fter partial transmission through finger/thumb 11 the light at the selected wavelength is then detected by detector rings 831, 833, and 835 supported (by means not shown) on disc 837. FIG. 36 shows the equidistant nature of the rings. Thereafter, the wavelength is changed and another specific wavelength is partially transmitted through finger/thumb 11. The process is repeated until all desired wavelengths are transmitted." The Robinson reference is teaching that the process is repeated for all desired wavelengths including the step of detector rings 831, 833, and 835 detecting the selected wavelengths. The Examiner contends that the invention of Robinson teaches that at least two rays of light which belong to different wavelength bands pass both the first and second light incident ports and that each signal generator generates at least two signals. Therefore, Robinson meets the limitations of the present application and the rejection is properly maintained. Since the rejections of the independent claims are deemed proper due to the reasons stated above and the applicant provides no other arguments than the supposed deficiency of that Robinson doesn't teach that each detector ring is adapted to receive light in a different wavelength band and the failure of the secondary references to teach the deficiency, the rejection of the subsequent dependent claims are also maintained. .